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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/841,167

Filing Date: April 25, 2001

Appellant(s): FOULGER ET AL.

Foulger et al.
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 7/24/2008 appealing from the Office action mailed May 5, 2008

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

NEW GROUND(S) OF REJECTION

Claims 3-6, 9, 10, and 34-37 are rejected under 35 U.S.C. 101.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

NEW GROUND(S) OF REJECTION

Claim Rejections - 35 USC § 101 (new)

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 3-6, 9, 10, and 34-37 are rejected under 35 U.S.C. 101 based on

Supreme Court precedent, and recent Federal Circuit decisions. For a process to be patentable subject matter under § 101 the process must (1) be tied to another statutory class of invention (such as a particular apparatus) or (2) transform subject matter to a different state or thing. See Diamond v. Diehr, 450 US 175, 184 (1981); Parker v Flook, 437 US 584, 588 n9 (1978); Gottschalk v. Benson, 409 U.S. 63, 70 (1972); Cochrane v. Deener, 94 US 780, 787-88 (1876). If neither of these requirements is met by the claim, the method is not a patent eligible process. To qualify under § 101 as a statutory process, the claim should positively recite the other statutory class (the thing or product) to which it is tied, for example by identifying the apparatus that accomplishes the method steps, or positively recite the subject matter that is being transformed, for example by identifying the material that is being changed to a different state.

In the present case, none of method (process) claims 3-6, 9, 10 or 34-37 transform subject matter to a different state or thing or recite a particular apparatus for

performing the steps of the method. Rather, all of the steps may be performed by a human, by hand, or by mental steps. As such the invention as claimed is ineligible for patenting under 35 U.S.C. 101.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 3-6, 9-10, 15-18, 21-23, 26-29, and 32-46 are rejected under 35 U.S.C. 102(e) as being anticipated by Carpenter et al. (U.S. 2003/0229638).

As per claim 3, Carpenter et al. teaches a method of generating employment market statistics from a network, comprising:

accessing an employment resource via the network, the employment resource comprising data (See paragraphs 0013, 0019, 0036 which discloses accessing via the Internet employment resource data);

matching the data to one of a plurality of employment market categories
(See paragraphs 0019-20, 0036, 0042-3, wherein the data is matched to a market category); and

updating at least one statistical indicator associated with the matched employment market category (See paragraphs 0046-7, 0054-6, wherein indexed data is collected, organized, and interpreted);

wherein the updating comprises **calculating a ratio of resumes associated with the matched employment market category to job listings associated with the matched employment market category** (See paragraphs 0037-46 wherein the search engine returns a rated percentage result and 0054-6, wherein a relation (a ratio of one measure to another) of a resume to multiple job listing or a job listing to multiple resumes occurs).

As per claim 4, Carpenter et al. teaches a method of generating employment market statistics from a network, comprising:

accessing an employment resource via the network, the employment resource comprising data (See paragraphs 0013, 0019, 0036 which discloses accessing via the Internet employment resource data);

matching the data to one of a plurality of employment market categories (See paragraphs 0019-20, 0036, 0042-3, wherein the data is matched to a market category); and

updating at least one statistical indicator associated with the matched employment market category (See paragraphs 0046-7, 0054-6, wherein indexed data is collected, organized, and interpreted);

wherein the updating comprises:

incrementing a first counter associated with the matched employment market category when the employment resource is a resume (See paragraphs 0036 and 0046-9, wherein a counter is updated associated with the matched resume, the counter counting the time);

incrementing a second counter associated with the matched employment market category when the employment resource is a job listing (See paragraphs 0036 and 0046-9, wherein a counter is updated associated with the matched job posting, the counter counting the time).

As per claim 5, Carpenter et al. discloses wherein **each of the plurality of market categories corresponds to a particular labor type and region** (See figure 10 and paragraphs 0042-3, 0050, which discloses title, description, and location).

As per claim 6, Carpenter et al. discloses wherein step the matching comprises:
matching the employment resource to a raw category (See figure 2, and paragraph 0037, 0042, which discusses the received information being categorized as unprocessed);

matching the employment resource to an interim category (See figure 2 and paragraph 0042, wherein the data is processed and temporarily stored in a short term state category);

matching the employment resource to an employment market category (matching to final category (See paragraph 0042-3, wherein the resource is matched).

As per claim 9, Carpenter et al. discloses wherein the accessing comprises:

sending a client request across the network to a server (See figure 1 and paragraphs 0013, 0019, 0036-7, wherein the request is sent via a network and server); and

receiving the employment resource via the network (See figure 1 and paragraphs 0013, 0019, 0036, wherein the resource is received).

As per claim 10, Carpenter et al. discloses a method further comprising the steps of:

repeating the accessing, matching, and updating steps for each of a plurality of employment resources (See paragraphs 0036-7, 0039, 0045, 0054-6, wherein the process repeats to maintain fresh data); and

for each of the plurality of market categories, plotting the associated statistical indicator (See paragraphs 0022, 0054-0056, wherein the updating indicator is designed and mapped).

Claims 15-18 and 21-22 are system claims substantially reciting as functional elements the limitations to claims 3-6 and 9-10, respectively, and are rejected using the same art and rationale applied above, and that Carpenter teaches a system implementing the equivalent functions as hardware, software, or a combination thereof.

As per claim 23, Carpenter et al. teaches the functional limitations of **a statistical engine** as discussed above with regards to claim 3, and further teaches **a spider engine** that accesses an employment resource and a statistical analysis engine to

perform the recited functions (See paragraphs 0035-6, 0039, 0047 which discusses a spider engine accessing the data over the network. See paragraphs 0047-8, 0054-6, which discusses an analysis engine).

Claims 26-29 and 32-33 recite equivalent limitations to claims 3-6 and 9-10, respectively, and are therefore rejected using the same art and rationale applied above.

Claims 34-39, and 40-41 recite equivalent limitations to claims 5, 6, 9 and 10 and are therefore rejected using the same art and rationale applied above for the respective claim and claim limitations.

Claim 42 recites equivalent limitations to claims 23 and 4 and is therefore rejected using the same art and rationale applied above.

Claims 43-44 and 45-46 recite equivalent limitations to claims 5-6 and 9-10, respectively, and are therefore rejected using the same art and rationale applied above.

(10) Response to Argument

Applicant argues Carpenter et al. (US Pat. Pub. 2003/0229638 now US Pat. No. 7,099,872) fails to teach or suggest (1) the feature of calculating a ratio of resumes associated with the matched employment market category (claims 3, 15, 23, and 26); or (2) the feature of incrementing a first counter associated with the matched employment market category when the employment resource is a resume and incrementing a second counter associated with the matched employment market category when the employment resource is a job listing (claims 4, 16, 27, and 42). Applicant further argues (3) that the Carpenter Provisional and the Carpenter et al. provisional (60/180368) fails to support either of features (1) and (2) and thus fails to support the benefit of the earlier filing date of the Carpenter nonprovisional application for prior art purposes.

Examiner respectfully disagrees:

In response first to argument (3) above, a non-provisional application may be afforded the priority date of the provisional application so long as there is adequate written description to support that the inventors did in fact have possession of the invention described in the non-provisional application at the time of filing the provisional. The support found in the provision does not have to be verbatim as long as one reasonably feels that the inventor had possession of the invention at time of filing. Thus, the non-provisional application is itself proper prior art, unless it can be proven that the disclosure is not fully supported by the provisional.

With respect to support in the Carpenter provisional, Examiner notes that the Carpenter application (US Appl. No. 10/129,416) is a National Stage filing of

PCT/US01/03741, which in turn claims benefit to US Provisional Appl. No. 60/180,368 (filed 2/4/2000) and 60/198181 (filed 04/19/2000). Thus, if support can be reasonably found in the Carpenter provisional, then the Carpenter patent enjoys benefit of an earlier filing date than the earlier effective filing date of the present application (4/25/2000).

As to reasonable support of the argued features (1) *calculating ratios* and (2) *incrementing first and second counters* in the teaching relied upon in the Carpenter patent (see paragraphs [0037-0046] and [0054-56], the Carpenter provisional application teaches at pages 13-16 in the section “**Highlights**” a spider engine technology which builds an indexed database of “millions” of job listings and provides increased **Search Accuracy** for matching resumes to job listings, and a listing of the most relevant job listings (Figures, page 12). The technology of searching and producing relevant job listings and accurately producing the most relevant matched listings reasonably supports the technology of Carpenter’s searching for producing relevant job listings by calculating a match between resumes and relevant job listings. As to incrementing first and second counters, the provisional expressly discloses maintaining an *indexed* database of job listings collected from the internet (see “**The GIG Jobs Database**”) and the resume postings of users, *indexing* being a form of counting inherent in computer databases which collect, store, and provide access to the stored data.

Specifically, with regards to the “calculating a ratio” feature (1), Examiner notes reliance on the Carpenter nonprovisional, specifically paragraphs 0046-7, 0054-6, to teach this limitation. Carpenter et al. specifically discloses processing and indexing

documents. Documents are classified as job-postings, resumes, or irrelevant. The classification further includes location information (city, state, and zip code). Through this process, the document becomes searchable, such as by city, state, etc. See paragraphs 0042-3. See also paragraphs 0044-5 and 0049-50 for context. After the information above is stored in the system, the resumes and job listings are matched. Carpenter states that a search is performed on the resumes and a set of resumes with a relevant percentage rate are returned as good matches. Therefore a proportion (a ratio) of the entire pool of resumes is returned as results to the search according the percentage match (another ratio) of the resumes to the job listings. See paragraph 0054.

Looking to the provisional for support that the inventor had possession of the invention at time of filing, the provisional application of Carpenter et al. discusses such storing document and making them searchable (See at least pages), as well as returning a proportion of the entire pool of resumes (See at least pages 2, 4, 7-9, which discloses the concept based searching technology. See pages 12, 16, 19, where search results that are gained that are a portion of the entire pool).

Specifically, with regards to the “incrementing a counter” feature (2), Examiner notes reliance on Carpenter nonprovisional, specifically paragraphs 0046-7, 0054-6, to teach this limitation. A spider engine in the system collects data, which is indexed and stored. As information is retrieved and stored, operating parameters of the system are dynamically updated. Limits are checked against amounts of new data in order to determine whether to postpone the spider engine or increase its capability. Therefore, a

spider retrieves resume and job posting content. In the broadest reasonable interpretation, a “counter” is anything used to keep a count of something. In the system of Carpenter, the amount of data stored is tracked and when the amount is higher than a limit, the spider’s activity is changed. The system also maintains count of the age of documents. Therefore, Carpenter teaches counters associated with the data of the system. See paragraphs 0046-8.

Looking to the provisional for support that the inventor had possession of the invention at time of filing, the provisional application of Carpenter et al. discusses spider technology and counting documents. See pages 8-9, 11-12, which discloses spider tools, real time indexes, and data collection.

Therefore, it is reasonable to assume that the inventor Carpenter had possession of the invention at time of filing as support in the Carpenter provisional for the detailed implementation disclosed in the Carpenter nonprovisional application can be reasonably found. Thus, Examiner maintains that Carpenter et al. is an appropriate prior art reference supported by provisional 60/180368 with regards to the argued features.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner’s answer.

This examiner's answer contains a new ground of rejection set forth in section (9) above. Accordingly, appellant must within **TWO MONTHS** from the date of this answer exercise one of the following two options to avoid *sua sponte dismissal of the appeal* as to the claims subject to the new ground of rejection:

(1) **Reopen prosecution.** Request that prosecution be reopened before the primary examiner by filing a reply under 37 CFR 1.111 with or without amendment, affidavit or other evidence. Any amendment, affidavit or other evidence must be relevant to the new grounds of rejection. A request that complies with 37 CFR 41.39(b)(1) will be entered and considered. Any request that prosecution be reopened will be treated as a request to withdraw the appeal.

(2) **Maintain appeal.** Request that the appeal be maintained by filing a reply brief as set forth in 37 CFR 41.41. Such a reply brief must address each new ground of rejection as set forth in 37 CFR 41.37(c)(1)(vii) and should be in compliance with the other requirements of 37 CFR 41.37(c). If a reply brief filed pursuant to 37 CFR 41.39(b)(2) is accompanied by any amendment, affidavit or other evidence, it shall be treated as a request that prosecution be reopened before the primary examiner under 37 CFR 41.39(b)(1).

Extensions of time under 37 CFR 1.136(a) are not applicable to the TWO MONTH time period set forth above. See 37 CFR 1.136(b) for extensions of time to reply for patent applications and 37 CFR 1.550(c) for extensions of time to reply for ex parte reexamination proceedings.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Dave Robertson/

Examiner, Art Unit 3623

Conferees:

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A Technology Center Director or designee must personally approve the new ground(s) of rejection set forth in section (9) above by signing below:

/Wynn Coggins/

Director, TC 3600

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